LAM SIEW YING v. LIP HOONG & ANOR.

[O.C.J. (Pawan Ahmad J.) September 25, 1970]

[Ipoh — Originating Motion No. 10 of 1968]

Landlord and Tenant — Statutory tenant — Statutory tenant ceasing to be such on giving up possession — Bankruptcy of tenant — Whether premises vest in Official Assignee.

The applicant had rented out certain premises to the first respondent for a period of two years and had also given him an option to purchase the premises within the said period. The first respondent had been in occupation of the premises but as he had failed to pay the rents due the applicant sent him a notice to quit. In the meantime before the expiry of the notice to quit the first respondent transferred the tenancy to his son and ceased to be in occupation of the premises. The first respondent was later adjudged a bankrupt and the applicant applied for an order that the premises be vested in the Official Assignee, that the Official Assignee be directed to disclaim the tenancy and that the premises be then vested in the name of the applicant.

Held: as the first respondent was not in possession of the premises after the expiry of notice to quit he was not a statutory tenant of the premises and therefore the tenancy of the premises did not vest in the Official Assignee automatically upon the first respondent being adjudged a bankrupt.

Case referred to:

(1) *M.K. Ramasamy Pillai* v. *Meyappa Chettiar & Anor.* [1955] M.L.J. 105, 106.

ORIGINATING MOTION.

N. H. Chan (*S. Mogansundram* with him) for the applicant.

J. R. Devadas for the first respondent.

Cur. Adv. Vult.

Pawan Ahmad J.: By an agreement dated 1st August 1966, namely, P. 1, the applicant who is the landlord of premises No. 60 Lahat Road, Ipoh, rented out the said premises to the first respondent for a term of two years from the aforesaid date at a monthly rental of $500 payable in advance on or before the 1st of each calendar month. At the same time the applicant granted to the first respondent the option of purchasing the said premises, also within the same period.

The present application is "for an order that the premises No. 60 Lahat Road, Ipoh, be vested in the respondent secondly abovenamed on the 12th June 1967 and for an order directing the respondent secondly abovenamed to disclaim the said premises and for the further order that the said premises may be vested in the name of the applicant and for such further or other order as to the court seems fit and costs."

In the course of the trial the applicant abandoned the second and third limbs of the application, thereby leaving the first limb as the main application. From the evidence adduced at the trial it is apparent that the said premises is the property of the applicant and therefore I assume that the main subsisting application in effect is for an order that the tenancy in the said premises and not the premises be vested in the second respondent.

When the said agreement was executed the first respondent was occupying the whole of the ground floor of the said premises and he was using it for carrying on his business of retreading tyres; the 1st floor and 2nd floor were occupied by sub-tenants. Pursuant to the terms of the said agreement the first respondent paid in all only $1,500 as rents to the applicant for the months of August, September and October 1966. Thereafter the first respondent failed to pay his rents and so on 28th December 1966 the applicant through her solicitor sent a notice to the first respondent terminating his tenancy on 31st January 1967 under clause 4(b) of the said agreement.

In the meantime on 10th January 1967 before the expiry of the period of the said notice the first respondent entered into an agreement with his son whereby his son took over his business of retreading tyres on the whole of the ground floor of the said premises. In my view notwithstanding this agreement with his son his contractual tenancy still automatically expired on 31st January 1967. Thereafter he could subsist at most only as a statutory tenant provided he continued to remain in possession of the said premises.

In *M. K. Ramasamy Pillai* v. *O.RM.M.SP.SU. Meyappa Chettiar & Anor.*,[1] Thomson J. (as he then was) stated that

"before a person can claim to be a statutory tenant of premises four conditions must be fulfilled:

(a) he must have been a tenant of the premises;

(b) his tenancy must have been determined, not assigned or anything of the sort;

(c) he must have remained in possession of the premises after the determination of his tenancy; and

(d) the provisions of the Ordinance must prevent him being deprived of possession by the landlord of the premises."

In the same case his Lordship also held that there is no difference between the English law and our local law relating to the interpretation of a statutory tenant. Further, his Lordship stated by applying the English reported cases he was satisfied

"that it is well settled law that the English Acts only afford protection to a person who is in actual occupation of the premises and that the word 'possession' in section 15(1) of the English Act of 1920 means actual possession and does not include any sort of constructive possession by a sub-tenant or assignee or licensee of the whole of the premises."

From the facts of the case it is apparent that from 10th January 1967 onwards the first respondent's son carried on the said business and the first respondent collected only rents from his son. Subsequently, on 12th June 1967 the first respondent was adjudged a bankrupt and thereafter he ceased even to collect any rents from his son. He also admitted that during this period he was living with his wife at No. 242, Jalan Empat, Housing Trust, Kampar Road, Ipoh, bought by him by instalments sometime in 1964. I therefore find as a fact that on 31st January 1967 when the notice terminating his tenancy expired the first respondent not only ceased to be a contractual tenant but he also did not continue to exist thereafter as a statutory tenant because he failed to fulfil the third condition aforesaid to be a statutory tenant as he was then not in possession of the said premises.

Further there is also no evidence that the first respondent has exercised the option granted to him to purchase the said premises within the stipulated period of two years from the date of the said agreement.

In the circumstances when the first respondent was adjudged a bankrupt on 12th June 1967 he was not a statutory tenant of the said premises. The tenancy of the said premises therefore could not have been vested in the second respondent automatically upon the first respondent being adjudged a bankrupt on 12th June 1967.

This application is therefore dismissed with costs.

Application dismissed.

Solicitors: *Yeoh Kian Teik & Co.; J. R. Devadas.*

NAGAPPA CHETTIAR & ORS. v. COLLECTOR OF LAND REVENUE

[O.C.J. (Wan Suleiman J., Dato Wan Ibrahim bin Wan Soloh and Dato Syed Idrus Al-Idrus, Assessors) September 30, 1970]

[Alor Star — Land Reference No. 1 of 1968]

Land Acquisition — Compensation — Considerations to be taken into account in assessing amount of compensation — Market value — Evidence of sales of same land or similar land in neighbourhood — Bendang land — Potential value as building land — Severance loss — Land Acquisition Act, 1960, ss. 12 & 51(1)(d).

Land Acquisition — Compensation — Applicant asking for, exceeding 20% amount awarded — Costs.

The applicants were the co-owners of *bendang* land in Kota Star. The land had been acquired for the purpose of constructing a by-pass road and the Collector of Land Revenue had awarded $3,000 per *relong* as compensation. The applicants had claimed $16,500 per *relong* as compensation. The applicants' grounds of objection to the award were that the collector had failed to take into consideration the potential value of the land as building land and that the award did not represent the true market value of the land.

Held: (1) in the circumstances the fair market price of the land would be $7,000 per *relong;*

(2) as the applicants had asked for compensation at $16,500 per *relong*, thereby exceeding by more than 20% the amount of the award, they will not be entitled to their costs.

Case referred to:-

(1) *Nanyang Manufacturing Co.* v. *Collector of Land Revenue Johore* [1954] M.L.J. 69.

LAND REFERENCE.

A. Jayadeva for the applicants.

Tunku Mukhtar bin Tunku Yaacob (Legal Adviser, Kedah/Perlis) for the respondent.

Cur. Adv. Vult.

Wan Suleiman J.: The applicants are the co-owners of *bendang* land comprised in S.P. No. 11475 Lot 911 (hereinafter referred to as "Lot 911") in the Mukim of Pengkalan Kundor, Kota Star, Kedah. Part of this lot, in area 6 acres 3 roods 6.1 poles was acquired by Government by *Gazette* Notification No. 181 dated 30th June, 1966 (Kedah Government *Gazette*) for the purpose of constructing a Western By-Pass Road to Perlis.

The Collector of Land Revenue held an enquiry on 3rd December, 1966, as required by law, to determine the amount of compensation to be paid to applicants for the land so acquired. In his grounds of award the collector rejected applicants' claim for compensation at the rate of $16,500 per *relong*, and instead awarded $3,000 per *relong*.

Paragraph 3 of the grounds of award set out in full hereunder adequately sums up the factors taken into account by the collector in arriving at this figure: —

> "It is a well-known fact that first class "*bendang*" land is selling at an average price of $1,200.00 per *relong* in the *padi* area of North Kedah, except in cases where the land lies in the town area or having road frontage where the price is considerably more. In the case of Lot 911, the land lies just outside the Town Council limits of Alor Star and quite close to the Government Low Cost Housing Scheme. Therefore, consideration is given to its potentiality for development even though the present owners may not intend to develop it. Another factor in the land-owners' favour is that being non-Malay owners of Malay Reservation land, they are at liberty to sell their land to anybody they like. Hence the price would be more favourable."

The applicants' grounds of objection to the award briefly are that the collector had failed to take into consideration the potential value of the land as building land, and that the award did not represent the true market value of the land.

In assessing the amount of compensation to be awarded, section 12 of the Land Acquisition Act 1960 prescribes that the considerations to be taken into account are those set out in the First Schedule. This court would therefore have to apply the following considerations in determining what the *market value* of the acquired portion of Lot 911 really is: —

(1) The market value should be that at the date of the publication of the *Gazette* i.e. *30th June, 1966.*

(2) The effect of any express or implied condition of title restricting the use to which the scheduled land may be put.

(3) In determining the amount of compensation to be awarded there shall be taken into consideration the following matters and no others —

(a) the market value as determined in accordance with paragraph 1 of this Schedule;

(b) any increase in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

(c) the damage, if any, sustained or likely to be sustained by the person interested at the time of the collector's taking possession of the land by reason of severing such land from his other land;

(d) the damage, if any, sustained or likely to be sustained by the person interested at the time of the collector's taking possession of the land by reason of the acquisition injuriously affecting his other property, whether movable or immovable, in any other manner or his actual earnings; and

(e) .....